

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONTINENTAL BUILDING SERVICES, INC.

and

Cases 31--CA--12487 and
31--CA--13276

HOSPITAL AND SERVICE EMPLOYEES UNION, LOCAL
399, SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 23 September 1982 and amended 3 November 1982 in Case 31--CA--12487, and 29 June 1983 in Case 31--CA--13276, the General Counsel of the National Labor Relations Board issued a complaint 29 June 1983 in Case 31--CA--12487 and a consolidated amended complaint 11 August 1983 in Cases 31--CA--12487 and 31--CA--13276 against the Company, the Respondent, alleging that it has violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act.

The complaint alleges that on 1 June 1983, following a Board election in Case 31--RC--5342, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The complaint further alleges that since 26 July 1982 the Company has refused to bargain with the Union and has made uni-

lateral changes in the terms and conditions of employment of unit employees. The Company timely filed its answer admitting in part and denying in part the allegations in the complaint. On 10 January 1984 the parties entered into a Stipulation of Facts in which the Respondent admitted the allegations contained in the consolidated complaint's paragraphs 7, 9, 10, and 11. On the same date the parties entered into an informal settlement agreement in Case 31--CA--12487 covering the consolidated complaint's paragraphs 12, 13, 14, 16, and the derivative portions of paragraphs 17, 18, and 19.

On 30 January 1984 the General Counsel filed a Motion for Partial Summary Judgment. On 1 February 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint and its Stipulation of Facts, the Respondent admits the Union's request and its refusal to bargain, and admits that it has made changes in the terms and conditions of employment of unit employees, but attacks the validity of the Union's certification on the basis of its objections to the election in the underlying representation proceeding. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 31--RC--5342, reveals that an election was held 22 July 1982 pursuant to a Stipulated Election Agreement. The tally of ballots shows that of approximately 76 eligible voters, 40 cast valid ballots for and 24 against the Union; there were 18 challenged ballots. After conducting an investigation of the Company's objections and the chal-

lenged ballots, the Regional Director issued his report recommending that the objections be overruled, the challenges to 17 of the 18 ballots be sustained, and the Petitioner be certified. The Company filed exceptions to the recommendations. On 1 June 1983 the Board adopted the Regional Director's recommendations and certified the Union as the exclusive bargaining representative of the employees in the stipulated unit.

Since 22 July 1982, and specifically by letter dated 6 June 1983, the Union has requested the Company to bargain. Since 26 July 1982 the Company has refused. By letter of 14 June 1983, the Company acknowledged receipt of the 6 June 1983 bargaining demand and stated that "the company declines and refuses to meet or otherwise extend recognition to Local 399." On 26 July 1982 the Company unilaterally changed terms and conditions of employment of unit employees by restricting daily quitting and starting times, curtailing employee breaktime, instituting a program of written employee discipline, and disciplining employees for breaking newly imposed terms and conditions of employment.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the

Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Partial Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Delaware corporation, provides janitorial services, and has an office and its principal place of business in Santa Monica, California. It annually sells goods or services valued in excess of \$50,000 to customers or business enterprises within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than indirect inflow or indirect outflow. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held 22 July 1982, the Union was certified 1 June 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time janitorial and custodial employees employed by Respondent at its facilities located at the following addresses: 1875 Century Park East, Los Angeles, California; 9171 Wilshire Boulevard, Beverly Hills, California; 924 Westwood Boulevard (Security Pacific National Bank), Los Angeles, California; 10100 Galaxy Way, Century City, California; 3100 Ocean Park, Santa Monica, California; 700 Brand Boulevard, Glendale, California (Glendale Federal Savings); 2716 Ocean Park, Santa Monica, California (Watt Building); but excluding all other employees, guards, and supervisors, as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 22 July 1982 the Union has requested the Company to bargain, and since 26 July 1982 the Company has refused. About 26 July 1982 the Company unilaterally changed terms and conditions of unit employees' employment by restricting daily quitting and starting times, curtailing employee breaktime, instituting a program of written employee discipline, and disciplining employees for breaking newly imposed terms and conditions of employment. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after 26 July 1982 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, and by making unilateral changes in unit employees' terms and conditions of employment since that date, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also require the Company to rescind its unlawful unilateral changes in employees' terms and conditions of employment.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir.

1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Continental Building Services, Inc., Santa Monica, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Without notice to or bargaining with the Union, changing the terms and conditions of employment of the bargaining unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, including daily quitting and starting times, employee breaktime, and written employee discipline programs, and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time janitorial and custodial employees employed by Respondent at its facilities located at the following addresses: 1875 Century Park East, Los Angeles, California; 9171 Wilshire Boulevard, Beverly Hills, California; 924 Westwood Boulevard (Security Pacific National Bank), Los Angeles, California; 10100 Galaxy Way, Century City, California; 3100 Ocean Park, Santa Monica, California; 700 Brand Boulevard, Glendale, California (Glendale Federal Savings); 2716 Ocean Park, Santa Monica, California (Watt Building); but excluding all other employees, guards, and supervisors, as defined in the Act.

(b) Rescind the unilateral changes in unit employees' terms and conditions of employment made since 26 July 1982, including restricting daily quitting and starting times, curtailing employee breaktime, instituting a program of written employee discipline, and disciplining employees for breaking newly imposed terms and conditions of employment.

(c) Remove from its files any reference to any unlawful discipline imposed under the new written employee discipline program and notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

(d) Post at its facility in Santa Monica, California copies of the attached notice marked "'Appendix.'"¹ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

¹ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

30 April 1984

Donald L. Dotson,

Chairman

Robert P. Hunter,

Member

Patricia Diaz Dennis,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL--CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT, without notice to or bargaining with the Union, change the terms and conditions of employment of the bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, including daily quitting and starting times, employee breaktime, and written employee discipline programs, and WE WILL put in writing and sign any agreement reached:

All full-time and regular part-time janitorial and custodial employees employed by the Employer at its facilities located at the following addresses: 1875 Century Park East, Los Angeles, California; 9171 Wilshire Boulevard, Beverly Hills, California; 924 Westwood Boulevard (Security Pacific National Bank), Los Angeles, California; 10100 Galaxy Way, Century City, California; 3100 Ocean Park, Santa Monica, California; 700 Brand Boulevard, Glendale, California (Glendale Federal Savings); 2716 Ocean Park, Santa Monica, California (Watt Building); but excluding all other employees, guards, and supervisors, as defined in the Act.

WE WILL rescind the unilateral changes in unit employees' terms and conditions of employment made since 26 July 1982, including restricting daily quitting and starting times, curtailing employee breaktime, instituting a program of written employee discipline, and disciplining employees for breaking newly imposed terms and conditions of employment.

WE WILL notify employees in writing that we have removed from our files any reference to any unlawful discipline imposed under the new written employee discipline program.

CONTINENTAL BUILDING
SERVICES, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213--209--7357.